

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 01-0035**  
**RESPONSIBLE OFFICER**  
**WITHHOLDING TAX**  
**For Tax Periods: 1988-1990**

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**Issues**

**Withholding Tax** -Responsible Officer Liability

**Authority:** IC 6-3-4-8 (f), IC 6-8.1-5-1 (b), Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270 (Ind.1995)

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

**Statement of Facts**

The taxpayer was vice-president and employee of a corporation that did not remit the proper amount of withholding taxes to Indiana. The taxpayer was personally assessed for the taxes and protested these assessments. More facts will be provided as necessary.

**1. Withholding Tax**-Responsible Officer Liability

**Discussion**

The proposed withholding taxes were personally assessed against Taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer,

employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8.1-5-1 (b).

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270 (Ind.1995) at page 273: “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid. The factors considered to determine whether a person has such authority are the following:

1. The person’s position within the power structure of the Corporation;
2. The authority of the officer as established by the Articles of Incorporation, By-laws or employment contract; and
3. Whether the person actually exercised control over the finances of the business including control of the bank account, signing checks and tax returns or determining when and in what order to pay creditors.

Id. At 273.

The issue to be determined in this matter is whether or not the taxpayer was an officer or employee with the duty to remit the withholding taxes to the state of Indiana.

The taxpayer was a vice-president and employee of the corporation. As such, the taxpayer could be found to be a person with the duty to remit withholding taxes to Indiana. The amount of power and authority a vice-president or employee actually has varies from corporation to corporation. Therefore it will be necessary to consider the second and third indicia of authority as set out in the Safayan case.

The Articles of Incorporation do not give any indication of the actual authority of the taxpayer within the corporation structure. The corporate copy of the By-laws has been misplaced. Neither were the By-laws available from the Indiana Secretary of State’s office. Testimony at the hearing indicated that there never was a formal, written employment contract between the corporation and the taxpayer.

The final indicia concerns the actual authority and control the taxpayer had over corporate activities, particularly financial activities. Affidavits presented after the hearing indicate that the taxpayer was a project manager, ran various jobs, and supervised the office. The taxpayer was a signatory on the corporate checking account and actually signed checks for the corporation. This indicates that the taxpayer did have adequate authority and control over corporate financial matters to have a duty to remit withholding taxes to the state.

The taxpayer contends that the president was actually the person responsible for remitting withholding taxes to Indiana. The president accepted that responsibility at the hearing. The law does not require, however, that only one person be considered the person with a duty to remit taxes to the state. In the Safayan case, the corporate president was held to be a responsible person even though the day to day operations were specifically delegated to a vice-president in his employment contract as manager. "A party may be liable for trust taxes without having exclusive control over the corporation's funds." Safayan at 274. The corporate president's acceptance of responsibility does not mean that the taxpayer did not also have a duty to remit the withholding taxes to Indiana.

### **Finding**

The taxpayer's protest is denied.

KA/PE/MR 010607